

ASSEMBLY BILL

No. 471

Introduced by Assembly Member Nava

February 24, 2009

An act to amend Sections 11040, 11041, and 11045 of, to add Section 11046 to, to repeal Section 11043 of, and to repeal and add Section 11042 of, the Government Code, relating to legal services.

LEGISLATIVE COUNSEL'S DIGEST

AB 471, as introduced, Nava. Legal services.

Existing law requires certain state entities to obtain written consent from the Attorney General before employing legal counsel in any judicial proceeding.

This bill would recast these provisions and specifically authorize a state agency, as defined, to use in-house legal counsel in a noncivil litigation matter.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 11040 of the Government Code is
- 2 amended to read:
- 3 ~~11040. (a) This article does not affect the right of any state~~
- 4 ~~agency or employee to employ counsel in any matter of the state,~~
- 5 ~~after first having obtained the written consent of the Attorney~~
- 6 ~~General.~~
- 7 ~~(b)~~

1 11040. (a) It is the intent of the Legislature that overall
2 efficiency and economy in state government ~~be~~ *is* enhanced by ~~the~~
3 employment of the Attorney General as ~~the~~ *legal* counsel for ~~the~~
4 representation of ~~every state agencies and employees~~ *agency* in
5 ~~judicial and other proceedings~~ *civil litigation*.

6 ~~The~~

7 (b) ~~The~~ Legislature finds that it is in the best interests of the
8 ~~people of the State of California that the Attorney General be~~
9 ~~provided state to provide the Attorney General~~ with the resources
10 needed to develop and maintain the Attorney General's capability
11 to provide competent legal representation of ~~every state agencies~~
12 ~~and employees in any judicial proceeding~~ *agency*.

13 (c) ~~Except with respect to employment by the state officers and~~
14 ~~agencies specified by title or name in Section 11041 or when~~
15 ~~specifically waived by statute other than Section 11041, the written~~
16 ~~consent of the Attorney General is required prior to employment~~
17 ~~of counsel for representation of any state agency or employee in~~
18 ~~any judicial proceeding.~~

19 SEC. 2. Section 11041 of the Government Code is amended
20 to read:

21 11041. (a) ~~Sections 11042 and 11043 do~~ *Only the Attorney*
22 *General, or an assistant or deputy of the Attorney General, shall*
23 *act as the legal counsel to a state agency in civil litigation, unless*
24 *the employment of outside counsel is expressly authorized under*
25 *this section or another provision of law.*

26 (b) (1) *The Attorney General, in his or her discretion, may*
27 *authorize a state agency to employ outside legal counsel to act on*
28 *behalf of the state agency in civil litigation. The Attorney General's*
29 *authorization under this paragraph shall only be effective if it is*
30 *express and in writing.*

31 (2) *The Attorney General may withdraw authorization granted*
32 *under paragraph (1) at any time and in any manner.*

33 (c) *This section shall not apply to the Regents of the University*
34 *of California, the Trustees of the California State University, Legal*
35 *Division of the Department of Transportation, Division of Labor*
36 *Standards Enforcement of the Department of Industrial Relations,*
37 *Workers' Compensation Appeals Board, Public Utilities*
38 *Commission, State Compensation Insurance Fund, Legislative*
39 *Counsel Bureau, Inheritance Tax Department, Secretary of State,*
40 *State Lands Commission, Alcoholic Beverage Control Appeals*

1 Board (except when the board affirms the decision of the
2 Department of Alcoholic Beverage Control), State Department of
3 Education, and Treasurer with respect to bonds, nor to any other
4 state agency which, by law enacted after Chapter 213 of the
5 Statutes of 1933, is authorized to employ legal counsel.

6 ~~(b)~~

7 (d) The Trustees of the California State University shall pay the
8 cost of employing legal counsel from their existing resources.

9 SEC. 3. Section 11042 of the Government Code is repealed.

10 ~~11042. No state agency, commissioner, or officer shall employ~~
11 ~~any legal counsel other than the Attorney General, or one of his~~
12 ~~assistants or deputies, in any matter in which the agency,~~
13 ~~commissioner, or officer is interested, or is a party as a result of~~
14 ~~office or official duties.~~

15 SEC. 4. Section 11042 is added to the Government Code, to
16 read:

17 11042. (a) A state agency may employ in-house legal counsel
18 in a noncivil litigation matter in which the state agency is interested
19 or is a party as a result of the official duties of the state agency.

20 (b) The Attorney General may act as legal counsel to a state
21 agency in any matter, as he or she deems appropriate.

22 SEC. 5. Section 11043 of the Government Code is repealed.

23 ~~11043. Except as to the State agencies and laws specified in~~
24 ~~Section 11041, whenever any law authorizes any State agency to~~
25 ~~employ legal counsel other than the Attorney General, it shall be~~
26 ~~construed to refer to the Attorney General. The Attorney General~~
27 ~~may assign to the State agency assistants or deputies from his staff,~~
28 ~~under such terms as he deems necessary to conduct the legal~~
29 ~~business of or render legal counsel to the agency.~~

30 SEC. 6. Section 11045 of the Government Code is amended
31 to read:

32 11045. (a) (1) Whenever a state agency requests the ~~consent~~
33 ~~authorization~~ of the Attorney General to employ outside counsel;
34 as required by *subdivision (b) of Section 11040* ~~11041~~, the state
35 agency shall, within five business days of the date the request is
36 transmitted to the Attorney General, provide the designated
37 representative of State Employees Bargaining Unit 2 with written
38 notification of the request. The notice shall include the items
39 enumerated in subdivision (d).

(2) ~~All~~ ~~A state agencies agency~~, other than the office of the Attorney General, that ~~are~~ *is* not required to obtain the ~~consent required by authorization for employing outside legal counsel as required by~~ subdivision ~~(e)~~ (b) of Section ~~11040~~ 11041, shall provide written notice of any proposed contract for outside legal counsel to the designated representative of State Employees Bargaining Unit 2 five business days prior to execution of the contract by the state agency. The notice shall include the items required by subdivision (d). In the event of an emergency that requires the immediate employment of outside *legal* counsel, the state agency shall provide the written notice no later than five business days after the contract with outside *legal* counsel is signed.

(3) Whenever the Attorney General determines the need to employ outside legal counsel pursuant to subdivision (b) of Section 12520, the Attorney General shall give written notice to the designated representative of State Employees Bargaining Unit 2 within 10 days of that determination. The notice shall include the items enumerated in subdivision (d).

(b) The Attorney General shall provide the designated representative of State Employees Bargaining Unit 2 with a written report, at least monthly, of all ~~consents~~ *authorization* granted to every state agency pursuant to *subdivision (b) of* Section ~~11040~~ 11041.

(c) Notwithstanding ~~the above notice requirements subdivisions (a) and (b)~~, whenever ~~any~~ *a* state agency submits a proposed contract for outside *legal* counsel to the Department of General Services pursuant to Section 10335 of the Public Contract Code, the *state* agency shall provide a copy of the contract to the designated representative of State Employees Bargaining Unit 2.

(d) “Written notice” within the meaning of this section shall include, but not be limited to, all of the following:

(1) A copy of the complaint or other pleadings, if any, that gave rise to the litigation or matter for which a contract is being sought, or other identifying information.

(2) The justification for the contract, pursuant to subdivision (b) of Section 19130.

(3) The nature of the legal services to be performed.

(4) The estimated hourly wage to be paid under the contract.

(5) The estimated length of the contract.

1 (6) The identity of the person or entity that is entering into the
2 contract with the state.

3 ~~(e) “State agency,” as used in this section, means every state~~
4 ~~office, department, division, bureau, board, or commission,~~
5 ~~including the Board of Directors of the State Compensation~~
6 ~~Insurance Fund, but does not include the Regents of the University~~
7 ~~of California, the Trustees of the California State University, the~~
8 ~~Legislature, the courts, or any agency in the judicial branch of~~
9 ~~government.~~

10 ~~(f)~~

11 (e) (1) The notice requirements of this section do not apply to
12 contracts for expert witnesses or consultations in connection with
13 a confidential investigation or to any confidential component of a
14 pending or active legal action.

15 (2) The exemption authorized in paragraph (1) shall only apply
16 as long as necessary to protect the confidentiality of the
17 investigation or the confidential component of a pending or active
18 legal action.

19 (3) Disclosures made pursuant to this section are deemed to be
20 privileged communications for purposes of subdivision (c) of
21 Section 912 of the Evidence Code, and shall not be construed to
22 be a waiver of any privilege or exemption provided by law,
23 including, but not limited to, the lawyer-client privilege, as
24 described in Section 952 of the Evidence Code, or attorney work
25 product, as described in Chapter 4 (commencing with Section
26 2018.010) of Title 4 of Part 4 of the Code of Civil Procedure.

27 ~~(g)~~

28 (f) If the provisions of this section are in conflict with the
29 provisions of a memorandum of understanding or other written
30 agreement reached pursuant to Section 3517 or 3517.5, the
31 memorandum of understanding or agreement shall be controlling
32 without further legislative action, except that if any provision of
33 the memorandum of understanding or other agreement requires
34 the expenditure of funds, the provisions may not become effective
35 unless approved by the Legislature.

36 SEC. 7. Section 11046 is added to the Government Code, to
37 read:

38 11046. For purposes of this article and unless otherwise
39 specifically stated, the following definitions shall apply:

- 1 (a) “Civil litigation” means any adjudicatory proceeding before
2 an administrative or judicial body in which a state agency is
3 interested or is a party as a result of the duties of the state agency.
- 4 (b) “Outside legal counsel” means an attorney who is authorized
5 to practice law in this state and works in the private sector.
- 6 (c) “State agency” means every state office, department,
7 division, bureau, board, commission, and every officer and
8 employee thereof. “State agency” does not mean the Regents of
9 the University of California, the Trustees of the California State
10 University, the Legislature, or the courts or any other entity within
11 the judicial branch of state government.